

G52SBUR1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 95 (AJN)

5 NICO BURRELL, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 May 2, 2016
12:00 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14
15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
Southern District of New York

18 RACHEL MAIMIN

Assistant United States Attorney

19 DAVID MIKSTROM

20 Attorney for Defendant Michelle Jose Rodriguez

21 JEFFREY PITTELL

Attorney for Defendant Javone Pearce

22 DAVID GREENFIELD

23 Attorney for Defendant Douglas McClarty

24 WINSTON LEE

Attorney for Defendant Anthony King

25 KAFAHNI NKRUMAH

G52SBUR1

Attorney for Defendants Anderson Ross, Martin Mitchell

MARILYN READER

Attorney for Defendant Shaquille Dewar

MEGAN BENETT

Attorney for Defendant Joel Hargrove

PAUL RINALDO

Attorney for Defendant Shaquille John, Quayshawn Cannonier

SAM SCHMIDT

Attorney for Defendant Shanice John

RUSSELL NEUFELD

Attorney for Defendant Jamal Blair

RICHARD J. MA

Attorney for Defendant Barffourt Abeberse

G52SBUR1

(Case called)

THE COURT: I'll take appearances first from the government.

MS. MAIMIN: Good afternoon, your Honor. Rachel Maimin for the government.

THE COURT: Good afternoon, Ms. Maimin.

What I'll do with the defendants is I'll state the defendant's name and I'll ask defense counsel who is here on their behalf to stand, state your name, and I will ask the defendant, as I state your name, to stand at that moment as well, so that I can see each of you and who is representing you.

I'll note, we do have a full courtroom, and I want to make sure everybody has room. If we run out of room, there is an overflow courtroom which is in this courthouse at room 444. So you'll be able to, if for some reason you can't fit here, you would be able to watch and listen to the proceedings from that room.

There are some young folks here, and I will just ask, if we run into issues with noise, I will ask that you proceed to the overflow courtroom so that we can make sure that we can proceed efficiently today and so that counsel and defendants can hear everything that is taking place. We will make sure that everyone who wants to be present can be.

I have heard appearances on behalf of the government.

G52SBUR1

1 Turning to the defendants, the first defendant I'll ask to
2 stand is Jose Rodriguez.

3 MR. WIKSTROM: Good afternoon, your Honor.

4 My name is David Wikstrom. Mr. Rodriguez is my
5 client. He is juror No. six, I guess. I am joined by my
6 associate Joshua Fitz, who is sitting in the first row.

7 THE COURT: Good afternoon to the three of you. Thank
8 you.

9 Javone Pearce.

10 MR. PITTELL: Good afternoon, your Honor. Jeffrey
11 Pittell on behalf of Mr. Pearce, who is standing.

12 THE COURT: Good afternoon to you both. Thank you.

13 Douglas McClarty.

14 MR. GREENFIELD: Good afternoon, your Honor. David
15 Greenfield for Mr. McClarty, who was standing.

16 THE COURT: I did see that. Thank you. Good
17 afternoon.

18 Anthony King.

19 MR. LEE: Good afternoon, your Honor. Winston Lee for
20 Mr. King.

21 Your Honor, it is important that I note that my
22 client's girlfriend, mother, brother, and sister are in court,
23 as well as his daughter, because they may not be able to take
24 two days off in a row and be present at tomorrow's bail review
25 hearing. I wanted your Honor to note that they're here today

G52SBUR1

1 on his behalf.

2 THE COURT: I appreciate that. Thank you.

3 Anderson Ross.

4 MS. BENETT: Good afternoon, your Honor. Meghan
5 Benett, standing up on behalf of Kafahni Nkrumah, who is to
6 represent Mr. Ross. I have talked to Mr. Ross about that
7 already.

8 THE COURT: Thank you.

9 Yes, I should say, counsel who are representing, there
10 are few instances where we have other counsel standing in.
11 Thank you and good afternoon to you both.

12 Shaquille Dewar.

13 MR. RICCO: Good afternoon, your Honor. I am Marilyn
14 Reader, and I represent Shaquille Dewar.

15 THE COURT: Good afternoon to you both.

16 Joel Hargrove.

17 MS. BENETT: Good morning, your Honor. Megan Benett,
18 again, for my client, Joel Hargrove, who is standing in the
19 jury box.

20 THE COURT: Thank you. Good afternoon to you both.

21 The next person listed, Ms. Maimin, I believe will be
22 at the next conference, but was indicated to be here at this
23 conference. I wanted to get confirmation of that. Devante
24 Joseph, your list indicated for this conference, I understand
25 will be at the next conference.

G52SBUR1

1 MS. MAIMIN: Confirmed.

2 THE COURT: Shaquille John.

3 MR. RICCO: Paul Rinaldo for Mr. John. Good
4 afternoon.

5 THE COURT: Good afternoon to you both.

6 Quayshawn Cannonier.

7 MR. RICCO: Paul Rinaldo. With the court's
8 permission, I am standing in for Kerry Lawrence. The defendant
9 has notification.

10 THE COURT: Good afternoon to you both. Thank you.
11 Shanice John.

12 MR. SCHMIDT: Good afternoon, your Honor. Sam
13 Schmidt. Ms. John is standing up in the audience. I am her
14 attorney.

15 THE COURT: Good afternoon to you both.
16 Jamal Blair.

17 MR. NEUFELD: Good afternoon, your Honor. Russell
18 Neufeld for Jamal Blair.

19 THE COURT: Good afternoon to you both.
20 Barfffour Abeberse.

21 THE DEFENDANT: Good afternoon, your Honor.
22 Richard Ma appearing on behalf of Mr. Abeberse.

23 THE COURT: Good afternoon to you both.

24 For the defendants, I am Judge Nathan. I am the
25 district court judge who will be handling this matter going

G52SBUR1

1 forward. I'll note that the case presents some management
2 challenges because of the large number of defendants who have
3 been named in the indictment. This case involves 62 defendants
4 charged in the indictment. As a result, I don't have a
5 courtroom big enough for everyone.

6 As I have just referenced, I am holding multiple
7 conferences throughout the day with approximately 15 to 20
8 defendants and their counsel in each conference, so if you hear
9 me refer to an earlier conference or a later conference, that's
10 why.

11 I'll also note I may at times refer to another cases
12 that called United States v. Parrish. That's in front of a
13 different district court judge. That case is also a large case
14 involving over 50 individuals who were arrested at the same
15 time. That indictment and this indictment make allegations of
16 related gangs being charged in the two indictments.

17 Because that case is proceeding at the same time,
18 though in front of a different judge, the government has
19 proposed to both me and Judge Kaplan, who is handling that
20 case, an overall process for him for managing the two cases,
21 and Judge Kaplan has issued an order, a scheduling order in
22 that case, which I have referred defense counsel to so we can
23 use that as a point of reference for our conversation.

24 I'll note I will also refer to the earlier conference
25 as well where I made some preliminary decisions about how to

G52SBUR1

1 schedule and just confirm if there are any objections or
2 disagreements to the proposals.

3 For immediate purposes, I will ask the government to
4 recite again, for the benefit of these defendants and these
5 defense counsel, a summary of the charges in the case and a
6 description of the categories of evidence that will be produced
7 in discovery, and then we will turn to the specifics of the
8 scheduling conference.

9 Ms. Maimin.

10 MS. MAIMIN: Beginning with the charges in the
11 indictment, the defendants are charged in one or more of four
12 counts.

13 The first charge is a racketeering conspiracy arising
14 from the defendants' participation in the Big Money Bosses
15 gang.

16 The second charge is a narcotics conspiracy charge.
17 It is relate to the racketeering conspiracy in that it also
18 relates to drug dealing by that gang.

19 The third charge is a substantive narcotics
20 distribution charge relating to the distribution or possession
21 with intent to distribute narcotics within 1,000 feet of a
22 public housing development, school, or playground.

23 The fourth count is a firearms offense. It is the
24 discharge of a firearm, and that's connected to the
25 racketeering and narcotics conspiracies charged in Counts One

G52SBUR1

1 and Two.

2 With respect to the categories of discovery
3 anticipated in this case, I will review them in turn.

4 The first are wiretaps. There were four wiretaps in
5 this case that led to hundreds of hours of intercepted
6 telephone calls. There are dozens of what we believe, at this
7 point, at least to be relevant, so we will be producing
8 recordings and associated line sheets for wiretaps, as well as
9 the supporting application materials.

10 THE COURT: Just a moment. I want to make sure
11 everybody can hear you. Thank you.

12 MS. MAIMIN: We will be producing the recordings for
13 the wiretaps, as well as the supporting application materials
14 and the associated line sheets. In order to facilitate defense
15 counsel's review of the wiretaps, we will identify for defense
16 counsel at this point our understanding of particular
17 defendants who are identified on the wiretaps by segregating
18 out those calls for those defendants.

19 As I anticipate we will, we will continue to identify
20 additional defendants on the wiretap and we will, on a rolling
21 basis, tell defense counsel when that has happened when their
22 defendant has been identified on the wiretap.

23 We also conducted multiple controlled purchases of
24 narcotics in this case by confidential informants and
25 undercover police officers. With respect to those purchases,

G52SBUR1

1 we will be producing invoices of seized evidence, any video or
2 audio recordings of the buys, and the so-called buy reports,
3 which provide additional information about the transaction.

4 A particularly voluminous category of evidence in this
5 case will be social media, that is, material that we have
6 seized or are in the process of seizing pursuant to search
7 warrants of Facebook and other social media accounts that can
8 range per defendant into the tens or even hundreds of thousands
9 of pages. However, that amount is not necessarily as large as
10 it seems because not every page has relevant material on it.
11 Some of it is technological information, a picture can take up
12 an entire page, and so forth.

13 Contents of cellular phones was another category of
14 evidence. We have already obtained search warrants and
15 searched several cellular phones during the course of this
16 investigation, but we also seized numerous phones during the
17 arrest in this case. We will expeditiously seek search
18 warrants for those phones. We will provide the application
19 materials. And as we produce reports relating to those phones,
20 we will produce the reports.

21 We did obtain through subpoena or request prison calls
22 and e-mails with respect to certain of the defendants who were
23 already in state or federal custody. We will produce those.

24 To the extent that we have already obtained police
25 files, for instance, homicide files relating to acts of

G52SBUR1

1 violence that we would intend to prove in connection with the
2 racketeering conspiracy charge and/or seek to charge in a
3 superseding indictment, even though they are not currently
4 charged substantively, we will produce any Rule 16 material
5 contained in those files at this time. And as we obtain
6 additional files, we will produce those on a rolling basis.

7 We did seek and obtain voluminous pen register and GO
8 location information in this case. As is customary, what we
9 intend to do is provide the applications for that data so that
10 defense counsel can review and make any motions that they deem
11 appropriate, but we will simply make the location data
12 available to them at our office because of its volume.

13 We have searched multiple locations in this case. We
14 will produce the application material and invoices of any
15 seized evidence. As always, defense counsel will have the
16 opportunity to review any physical evidence at our office.

17 There will also be, as in every case, individualized
18 discovery consisting of the defendants, rap sheets, criminal
19 history reports, in particular arrest reports unique to that
20 defendant, and the marshal's intake form. The government will
21 also produce post-arrest statements for particular defendants,
22 as the law requires.

23 THE COURT: Thank you, Ms. Maimin.

24 What we discussed in the earlier conference involved
25 setting a deadline of 30 days from today by which the Rule 16

G52SBUR1

1 material that you have just gone through, that you have, will
2 be produced to the defendants within 30 days?

3 MS. MAIMIN: That's correct, Judge.

4 THE COURT: We also talked about at the last
5 conference the hope for the ability to appoint a coordinating
6 discovery attorney.

7 I have been in touch with Jerry Tryst for that purpose
8 and the government's letter proposal indicated its presumption
9 that defense counsel would desire the appointment of such a
10 coordinating discovery attorney in this case given the volume
11 of discovery. The three individuals who are currently under
12 contract with the AAO for this purpose are not available, so
13 Mr. Tryst is working to try to find someone else. He is
14 working with, in connection with Judge Kaplan's case, Andy
15 Patel. And there is another defense counsel, Ms. Maimin?

16 MS. MAIMIN: Yes. It is Jesse Siegel, Andrew Patel,
17 and in the prior case here, Judith Vargas.

18 THE COURT: Judith Vargas here has volunteered to help
19 with the efforts to identify a coordinating discovery attorney
20 so that we can get them in place and facilitate the access to
21 the discovery materials for defense counsel.

22 I did confirm with the government that whether we get
23 someone or not, the information has to be -- the information
24 that we have just discussed, discovery material, has to be
25 produced within the next 30 days, and to the extent that

G52SBUR1

1 additional material comes in on a rolling basis.

2 But I did want to ask, I assume defense counsel are,
3 in principal, interested in the appointment of coordinating
4 discovery counsel. I just want to confirm, ask, if there are
5 any objections in principal to that?

6 MR. WIKSTROM: David Wikstrom, your Honor. No, no
7 objection whatsoever to that.

8 THE COURT: Thank you.

9 Ms. Vargas has volunteered in this case to continue to
10 work as a point person with Mr. Tryst to identify someone and
11 hopefully we can get someone in place quickly. I'll wait for
12 hopefully soon an application for that appointment soon.

13 We also discussed at the last conference ensuring, as
14 best we can, access to the discovery material by the
15 incarcerated defendants expressed some concern just about the
16 logistics of so many defendants at the same time needing access
17 to devices to view electronic material.

18 Ms. Maimin indicated that the government is working on
19 this and would submit a letter in ten days with what I hope is
20 a joint proposal for ensuring facilitation of the process.

21 Is that right, Ms. Maimin?

22 MS. MAIMIN: Yes, your Honor.

23 THE COURT: Any questions or concerns from defense
24 counsel on that?

25 Mr. Lee?

G52SBUR1

1 MR. LEE: Yes, your Honor.

2 With regard to the GPS and cell site data, before I
3 take any position on it, my understanding is that that's
4 excluded from the material that will be provided to the
5 coordinating discovery attorney.

6 Before I take a position, can the government explain
7 why that is something that the coordinating discovery attorney
8 should not receive and also perhaps process it to make it
9 available to defense counsel?

10 THE COURT: Ms. Maimin?

11 MS. MAIMIN: As is customary in, I think, every case I
12 have worked on, that data is extremely voluminous. We can talk
13 about ways to copy it if particular defense counsel want to
14 have copies of it themselves, as opposed to reviewing it at law
15 enforcement or the U.S. Attorney's office, which we would do at
16 their convenience if particular defense counsel wanted to
17 actually have a copy of it. I have never received a request
18 like that. I can certainly look into it.

19 MR. LEE: Judge, I think I speak for everyone, but the
20 option of going to their office and reviewing it at our
21 convenience, I think, is not a viable one. If the government
22 is agreeing if we make a request, either to give us our copies
23 individually or to provide it to coordinating discovery
24 attorney, I agree to either option, but I'll let the government
25 decide.

G52SBUR1

1 MR. GREENFIELD: Your Honor, if I might. David
2 Greenfield, Mr. McClarty's attorney. The government to stand
3 up to say it is customary in cases like this, this is not a
4 customary case. This is a one and only case. It is 120
5 defendants locked up on the same day. It is not customary of
6 any case that I have ever reviewed any sort of Rule 16 material
7 in the United States Attorney's office.

8 THE COURT: Thank you.

9 If we have a concern, there will be an opportunity to
10 raise a concern. Just have a seat. Have a seat. Thank you.

11 Ms. Maimin, any reason that it can't simply be
12 produced to the coordinating discovery attorney, or in the
13 absence of that, even though large volume in nature, to the
14 defense counsel?

15 MS. MAIMIN: I will certainly look into it and report
16 back promptly.

17 THE COURT: Is your concern just the technological
18 issue?

19 MS. MAIMIN: It is purely technological. I believe it
20 will be possible, if that is what counsel prefers, but I want
21 to just double-check before I make a representation about it.
22 I am happy to report back to the court.

23 THE COURT: Why don't you report back in the same
24 letter regarding access to discovery materials in the ten days
25 from now with a report back confirming if you can that can be

G52SBUR1

1 provided to the coordinating discovery attorney.

2 MS. BENETT: Megan Bennett on behalf of Joel Hargrove.
3 If I can just ask the government to consider also looking into
4 the possibility of web posting, on a secure site, that data
5 which would allow us to access it remotely, but wouldn't
6 require distributing large data files? It might resolve the
7 issues of having to travel to the U.S. Attorney's office to
8 review it. I believe their office has done that before on
9 other cases.

10 THE COURT: Ms. Maimin?

11 MS. MAIMIN: I'll look into it. Obviously, if we have
12 a coordinating discovery attorney, that is someone that can
13 assist in this regard.

14 THE COURT: We need to press forward in the meantime.
15 My assumption is any Rule 16 material that can be provided to
16 defense counsel will be provided to defense counsel.

17 You will report back in ten days confirming how it
18 will be done. If there are objections to what is offered, I'll
19 hear from defense counsel within five days of that letter.

20 MS. MAIMIN: OK, your Honor.

21 THE COURT: Thank you.

22 Anything else?

23 Mr. Greenfield, was that a no?

24 MR. GREENFIELD: That's correct.

25 THE COURT: That's our schedule. Our immediate

G52SBUR1

1 schedule for the production of discovery, and that turns us to
2 the scheduling question for motions and trial dates and next
3 conferences.

4 As many of you know, my standard practice is to set,
5 even if very far out, a motions and trial schedule at the first
6 conference. The government has -- I usually get groans about
7 that from everybody -- but the government here has suggested a
8 different process, which you have received in your letter.
9 Just to briefly describe it here, the suggestion to which there
10 was no objection at the last conference, was that I set a
11 conference for five months from now. And in advance of that
12 conference, the government will file a motion to sever into two
13 groups.

14 Essentially, the first group would be those for whom
15 no superseding indictment is anticipated. And with respect to
16 that group, we will come back in five months and set a motions
17 schedule and trial date or dates, depending on how many
18 defendants are in that group who appear to be going to trial.

19 With respect to those for whom the government does
20 anticipate filing a superseding indictment, which they have
21 indicated may include capital eligible charges, we would set a
22 conference for a year from now, and at that conference, with
23 respect to that group, set a motion schedule and trial date or
24 dates.

25 That's the overall proposal made by the government at

G52SBUR1

1 the last conference. I set October 20, 2016, as the first next
2 conference, the conference to take place from five months from
3 now. We also set a date for the government's severance motion
4 in advance of that conference, which would be September 27,
5 2016. The government would file its severance motion, and
6 opposition would be due October 11, 2016, and replies
7 October 17, 2016.

8 Also on that date of September 27, when the government
9 files its severance motion, the government would also at that
10 time do two things. It would file enterprise letters and it
11 would make informal indications to defense counsel at that time
12 whether or not their defendants are anticipated to potentially
13 face capital eligible charges, so we can move at that earliest
14 possible point, even pre-superseding indictment with any
15 capital charges for the potential appointment of learned
16 counsel. And then I set January 6, 2017, as the outside date
17 for the filing of any superseding indictment with any
18 additional charges or additional defendants.

19 Ms. Maimin, have I accurately summarized the schedule
20 that we have discussed at the last conference?

21 MS. MAIMIN: Yes, your Honor.

22 THE COURT: Defense counsel, any objections either to
23 the overall proposal and approach or the specific dates?

24 MR. WIKSTROM: None from me.

25 MR. NEUFELD: Russell Neufeld for Jamal Blair.

G52SBUR1

1 THE COURT: Mr. Neufeld, go ahead.

2 MR. NEUFELD: My request would be that, if Mr. Blair,
3 learned counsel, and related services be assigned now in both
4 the indictment in paragraph four and the government's press
5 release in paragraph three, they reference the Sadie Mitchell
6 homicide as one of the homicides that they are assuming there
7 will be a superseding indictment about.

8 My client, Mr. Blair, has already pled guilty to that
9 homicide and is currently serving state time on it. Because of
10 that factual reality, I would like to get learned counsel
11 appointed now. So I would request that the budget order come
12 from your Honor, the consultation with Mr. Tryst, and that CJA
13 attorneys for Mr. Blair's representation.

14 THE COURT: I think what I am ultimately going to ask
15 you to do is confirm with Mr. Tryst and put in the application.

16 But, Ms. Maimin, your reaction to the potential
17 appointment at this state?

18 MS. MAIMIN: Two points, your Honor, I want to
19 clarify.

20 We did list certain murders in the indictment. That
21 was not an indication that we are certainly going to supersede
22 as to those murders. Those are murders that are racketeering
23 acts in this case in connection with the racketeering
24 conspiracy.

25 That being said, we have no objection, because this

G52SBUR1

1 defendant is in a unique position in that he has already pled
2 guilty to conduct in connection with this murder, so this
3 unique circumstance, we have no objection to the appointment in
4 this case.

5 MR. GREENFIELD: Your Honor, I would like to be heard
6 on the same issue.

7 THE COURT: Could you find a mic, if you could,
8 Mr. Greenfield?

9 MR. GREENFIELD: For Douglas McClarty.

10 Based on what I read in the press, I would make the
11 same application on behalf of my client, Mr. McClarty. I would
12 certainly be in touch with Mr. Tryst on that. I am also on the
13 capital case panel. I would ask, obviously, to stay on and
14 also have learned counsel and budgetary issues determined with
15 Mr. Tryst at the earliest date possible.

16 THE COURT: Before I proceed further, any other
17 requests in this regard?

18 I think the reason to set the timeline as early as we
19 can is to know who, in fact, has any potential likelihood of
20 facing capital charges, but I am open to the two requests.

21 I apologize counsel who asked first. Could you remind
22 me your name, sir?

23 MR. NEUFELD: Russell Neufeld.

24 THE COURT: Are you on the CJA capital list?

25 MR. NEUFELD: Yes.

G52SBUR1

1 THE COURT: Thank you.

2 If you would confer with Mr. Tryst and submit an early
3 application, I would certainly turn to it immediately.

4 I think just to flesh out one issue that was expressed
5 as a concern by Judge Kaplan, and I inquired Ms. Maimin at the
6 earlier conference, the relevant statute for the appointment of
7 learned counsel seems to key the appointment to the indictment.
8 So because we are looking at a pre-indictment stage, Judge
9 Kaplan had expressed some concerns about ensuring the
10 appropriateness of the pre-indictment stage appointment of
11 learned counsel and confirming on the administrative end the
12 availability of funds in that context.

13 Ms. Maimin, do you want to report what you learned and
14 indicated at the earlier conference?

15 MS. MAIMIN: Yes, your Honor.

16 Based on our review of the statute and consultation
17 with Mr. Tryst and David Patton, who is responsible for death
18 penalty issues in this district, we don't believe there is any
19 reason not to appoint. Indeed, there are funds to appoint
20 learned counsel upon the government's notification on that
21 September date that certain defendants are anticipated to face
22 death eligible charges.

23 THE COURT: OK. Would it be feasible, Ms. Maimin, to
24 just get from the government that conclusion in a written
25 statement?

G52SBUR1

1 MS. MAIMIN: Certainly.

2 THE COURT: Thank you.

3 Why don't we fold that into the ten-day-from-now
4 schedule.

5 MR. GREENFIELD: One question, Judge.

6 THE COURT: Mr. Greenfield.

7 MR. GREENFIELD: In regards to discovery, I know
8 myself, Mr. Neufeld, and others here that I dealt with and
9 worked with in the past, the government mentioned wiretaps the
10 and police files. That would be most important to me, and I do
11 think Mr. Neufeld, that we see that first. Is that in the
12 first wave of discovery?

13 THE COURT: Go ahead, Ms. Maimin.

14 MS. MAIMIN: Yes, your Honor.

15 Right now we are anticipating one main discovery
16 production that's going to have everything that we have in our
17 possession right now to include police files we have and
18 wiretaps. As we acquire additional evidence, we will produce
19 it.

20 MR. GREENFIELD: Now, with regard to police files,
21 Ms. Maimin says they have police files in their possession.
22 Are we talking about DD 61s and 5s?

23 THE COURT: If you would address your question to me,
24 counsel.

25 MR. GREENFIELD: Are we dealing with DD 61s and 5s

G52SBUR1

1 which deal with day-to-day investigation conducted by the New
2 York City Police Department, or are we talking about what you
3 usually get are vouchers, seizure notices, things of that helm,
4 that do not go in any way of the preparation of a case
5 defending on individual who is charged with a murder?

6 I want to read the day-to-day investigative files of
7 the NYPD. If they are not in the government's possession, they
8 can call up the precinct and get them the same day. That's
9 discovery, Judge, and that is what I want.

10 I think Mr. Neufeld wants, with regard to his client,
11 and everybody particularly wants with their clients, not the
12 stuff that we are not going to look at in the trial, so we can
13 prepare for a trial.

14 That's the discovery I assume Ms. Maimin is referring
15 to?

16 THE COURT: I think, Ms. Maimin, the question, my
17 question is, could you describe in general terms the kinds of
18 materials that you have in your possession regarding state
19 investigations and the government's view as to what, if any,
20 its obligations are to obtain and turn over additional
21 materials?

22 MS. MAIMIN: Certainly, your Honor.

23 We will produce any Rule 16 material at this time
24 contained in the files, which will include the 61s, that is
25 complaint reports, invoices, ballistics reports and

G52SBUR1

1 photographs, any scientific analyses done, anything that falls
2 into Rule 16.

3 Defense counsel has requested what are called DD 5s,
4 which are reports made by law enforcement summarizing witness
5 statements and other material of that kind. That is not
6 Rule 16 material, that is 3500 material, which we will produce
7 at the appropriate time, unless it contains something that we
8 are required to produce now, such as Brady material, which we
9 will obviously produce at the earliest juncture.

10 THE COURT: All right. We will move on.

11 If there is any specific application or motion be made
12 as to failure for the government to meet its obligations, let
13 me know.

14 Thank you.

15 I think where we left it, does anyone have any
16 objection -- other than what has been voiced and I think we can
17 meet that request -- to the basic approach and the specific
18 deadlines I have put in place?

19 No.

20 Turning then to the one deviation from the
21 government's proposal that Judge Kaplan adopted, and I
22 indicated at the last conference I am inclined to adopt, is
23 that there are potentially motions to be made on the face of
24 the indictment as it exists now that there is no reason to
25 wait. You should get those briefed and in front of me for

G52SBUR1

1 decision sooner rather than later on the theory that, if they
2 are there now, they will likely be continued in the superseding
3 indictments.

4 What I indicated I was likely to do at the last
5 conference was to require that any available defense motions
6 that could be brought on the face of the indictment and
7 specifically any motions under Rule 12(b), 3(b, (i, (ii, (iii)
8 or (v), would be briefed, so this includes duplicity,
9 multiplicity, lack of specificity, and failure to state an
10 offense.

11 At the last conference, I set a conference for any
12 such motions that fall into that category as being due on or
13 before July 1, 2016, with opposition a month later, August 1,
14 2016, replies September 1, 2016.

15 Any objection to that approach or schedule?

16 MR. WIKSTROM: None, your Honor.

17 THE COURT: Thank you.

18 One counsel at the last conference indicated a
19 hypothetical concern, which he was unable to put any
20 specificity on, that maybe there would be something in the
21 enterprise letters that might shed some light on the kind of
22 motions that fall in this category.

23 I tried to think of any specific examples, again,
24 defining the category here as what could be brought on the face
25 of the indictment and not precluding any future motions based

G52SBUR1

1 on future learned information.

2 I gave him, I think, a week if he wanted to pursue
3 that concern, to put it in a letter to me, but otherwise the
4 schedule that I mentioned a moment ago, I anticipate is the
5 schedule I'll put in place at the end of the day after I finish
6 the third conference.

7 We have discussed what would be phase two. I won't
8 set a specific date now, but I would set a date about a year
9 from now for any defendants who fall into the phase two
10 following the severance motion. And at that conference, we
11 will set a motion schedule other than the one we just discussed
12 and trial date or dates depending on how many defendants
13 remain.

14 That is where we are in terms of scheduling. Let me
15 ask defense counsel if there are any other issues you would
16 like to raise or applications at this time?

17 MR. WIKSTROM: Your Honor, the one thing I would want
18 to schedule --

19 THE COURT: I need a mic, please.

20 MR. WIKSTROM: David Wikstrom for Jose Rodriguez. I
21 just want to clarify, your Honor, I intend to make a bail
22 application for my client, Jose Rodriguez. My understanding is
23 that your Honor is referring to the magistrate?

24 THE COURT: Yes. Initial applications to the
25 magistrate, and then if there are appeals, you can put in a

G52SBUR1

1 letter to chambers and we will get it scheduled.

2 MR. WIKSTROM: Thank you.

3 MR. LEE: Your Honor, I may have missed it, on
4 October 20, is there a time for the conference?

5 THE COURT: Thank you, Mr. Lee.

6 I will presume 10:00 a.m., and if we need multiple
7 conferences, depending on how many people, then we'll schedule
8 them again at 12 and at 2 as needed. I'll presume at this
9 point 10:00 a.m. Thank you.

10 MR. SCHMIDT: Your Honor, Sam Schmidt for Ms. Shanice
11 John. We have a slight modification of the bail consent. We
12 can do that now or do that after?

13 THE COURT: If it is on consent, just put in a letter
14 and I will so order it.

15 Thank you.

16 MR. PITTELL: Judge, Jeffrey Pittell for Mr. Pearce.
17 When we had a bail hearing in front of Magistrate Francis, bail
18 was granted, over the government's objection, he stated pending
19 appeal.

20 THE COURT: I think, actually, I stated pending
21 appeal.

22 MR. PITTELL: The government indicated to me that they
23 are not going to appeal. I just wanted the record to be clear
24 that the stay has lifted because all conditions have been met,
25 so he should be released today?

G52SBUR1

1 MS. MAIMIN: Yes. We determined today, your Honor, we
2 do not seek to appeal that ruling. Assuming all of the
3 conditions are met, which we will confirm with pretrial, we
4 will sign the bond.

5 THE COURT: That is with respect to Mr. Pearce?

6 MS. MAIMIN: Yes.

7 THE COURT: Thank you. Thank you, Mr. Pittell.

8 Anything else?

9 Application from the government?

10 MS. MAIMIN: Yes, your Honor.

11 We renew our prior request this morning to exclude
12 time pursuant to the Speedy Trial Act until the October 20
13 date, assuming your Honor so orders it, in order for the
14 government to collect and produce discovery, defense to review
15 discovery, prepare any potential motions, prepare for trial,
16 and discuss potential pretrial dispositions in the case.

17 Any objections?

18 ALL PRESENT: No, your Honor.

19 THE COURT: I won't make my final rule until the third
20 conference. I do presume that I will grant the government's
21 motion and find the ends of justice served by granting
22 exclusion from speedy trial computations from today's date
23 until October 20, 2016, will outweigh the interest of the
24 public and the defendant in a speedy trial for the reasons that
25 the government just indicated a moment ago.

G52SBUR1

1 I presume I will also find under Section 3161(h)(7)
2 that this case is unusual and complex, so unusual and complex
3 due to the number of defendants, the nature and scope of the
4 prosecution, the volume of discovery, that it would be
5 unreasonable to expect adequate preparation for pretrial
6 proceedings and for trial within the time limits established by
7 the Speedy Trial Act.

8 I will, as I have indicated, finalize all of the
9 scheduling matters, as well as the speedy trial application
10 that we have discussed at the end of the day once I have heard
11 from counsel at the third conference, to ensure that there are
12 no persuasive objections to any of the matters that we have
13 discussed. I think you can safely presume that what we have
14 discussed today will likely be what I finalize in an order at
15 the end of the day.

16 Anything else I can address at this time?

17 MS. MAIMIN: Not from the government. Thank you, your
18 Honor.

19 THE COURT: Anything from defense counsel?

20 ALL PRESENT: No, your Honor.

21 THE COURT: I thank all of you for your efforts. We
22 are adjourned.

23 (Adjourned)
24
25